

Maritime Law Handbook

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List of Abbreviations

AGCC	Arab Gulf Co-operation Council
CPC	Civil Procedure Code of 1992 (as amended by Federal Law No. 30 of 2005)
FML	Federal Maritime Law of 1981
UAE	United Arab Emirates

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Part I. Arrest of Vessels

1. SOURCES OF NATIONAL LAW

The United Arab Emirates (the UAE) was established in 1971 as a Federation of the Emirates of Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al Quwain and Fujairah. In 1972 the Emirate of Ras Al Khaimah joined the Federation, with the result that the UAE presently comprises the seven named Emirates.

The UAE is strategically located on the northeastern tip of the Arabian Peninsula, having its shores along the Arabian (Persian) Gulf and the Gulf of Oman where it joins the Arabian Sea. Previously forming part of the Trucial States, the region is imbued with a long maritime tradition, and several of its maritime customs continue to play an important role in the UAE shipping laws. The Constitution of the UAE (the Constitution) proclaims Islam as the official religion of the State. Accordingly, Islamic Law, the *Sharia'a*, plays a vital role in the UAE legislature. The Constitution specifically provides that the *Sharia'a* shall be a main source of legislation, and the *Sharia'a* may thus be described as the Common Law of the UAE.

Under the Constitution, the individual Emirates ceded certain elements of their sovereignty to the Federation, retaining the remainder for themselves. Thus each Emirate may promulgate its own laws, which are issued by a Decree of the Ruler of the Emirate in question. These laws apply to the individual Emirates, and do not operate in other Emirates or in the Federation unless specifically adopted. The UAE Federal Maritime Law of 1981 (the FML) was promulgated to govern all maritime matters throughout the UAE.

The question of arrest of vessels is governed by the FML; however, a distinction is made between 'provisional' arrest and 'executory' arrests: regulations relating to the former are contained in Articles 115–122 of the FML, while the latter are regulated by Articles 123–134. Where no provisions of law exist, the UAE Courts may apply maritime customs, and general principles of justice, provided these customs and principles do not conflict with the provisions of the *Shari'a* (Article 8 of the FML).

This contribution deals with the position as provided for in the FML, but it will also attempt to draw a distinction between theory and practice wherever it may appear to be appropriate.

2. APPLICABLE INTERNATIONAL CONVENTIONS

Article 8 of the FML provides that the FML shall not derogate from international agreements ratified by the UAE.

The UAE is not a signatory to the International Convention regarding the Immunity of State-Owned Vessels signed at Brussels in 1926, or the International Convention relating to the Arrest of Sea-Going Ships signed at Brussels in 1952. The principal provisions of these Conventions are, however, given effect to by the FML as will be discussed in a later chapter. The UAE is not currently a signatory to any international conventions relevant to the arrest of vessels.

The UAE is a member of the Arab Gulf Co-operation Council ('AGCC'). The AGCC was formed in 1981 between Saudi Arabia, Kuwait, Bahrain, Qatar, the UAE and Oman, and it seeks to achieve some uniformity in laws regulating various matters, including maritime law.

3. COMPETENCE OF COURTS OR OTHER AUTHORITY

Maritime matters are governed by the FML and are dealt with by the civil courts in the Emirates. If an order of arrest is sought as a provisional remedy, it may be preferable to apply to the civil court of the Emirate in whose jurisdiction the vessel is located. In the case of an executory arrest, the order for arrest may be obtained from the courts of the Emirate which issued the judgment. Such an order of arrest must then be served on the vessel through the courts of the Emirate where the vessel is located.

Article 122 of the FML provides that the civil court in whose area of jurisdiction the arrest took place shall be competent to decide on the subject matter of the claim in any of the following circumstances (in addition to those set out in the procedural laws of the UAE), even if the vessel does not fly the UAE flag:

- (a) if the claimant's usual address or main office is in the UAE;
- (b) if the maritime claim originated in the UAE;
- (c) if the maritime claim arose during the voyage upon which the vessel was arrested;
- (d) if the maritime claim arose out of a collision or an act of assistance over which the court has jurisdiction; and
- (e) if the claim is secured by a maritime mortgage over the arrested vessel.

3.1. Procedural laws in force within the UAE

Until 1992, the only Emirate which had a codified Civil Procedure Law was the Emirate of Abu Dhabi. In 1992, a Federal Civil Procedure Code ('CPC') was promulgated for the first time. Although the CPC does not contain any provisions specifically referring to arrests, it does contain extensive provisions relating to provisional measures, which would include arrests. Prior to the enactment of the CPC, in addition to the circumstances set out under Article 122 of the FML as described above, a civil court in the UAE would have jurisdiction to hear a substantive suit, if the defendant had a place of residence or office within the jurisdiction of the court, if the subject contract was entered into or performed within the jurisdiction of the court or if the cause of action arose within the jurisdiction of the courts. In practice, the courts in most Emirates have in the past granted provisional relief, such as arrest orders, because the vessel happened to be within the territorial jurisdiction of the court.

The CPC now appears to confer jurisdiction upon the UAE courts to hear a case against a foreign defendant who has no domicile or residence in the UAE and also to order provisional relief (such as the arrest of a vessel) even when the courts do not have jurisdiction to adjudicate upon the substantive merits of the matter. Article 21(2) of the CPC states that the courts of the UAE shall be competent to hear a suit against a foreign defendant who has no domicile or residence in the UAE, if the case concerns 'property' in the state. The Arabic word for 'property' used in this provision is not the word used for land or real estate, but has a wider meaning, which includes any item or right of value. This should include, for example, funds held in a bank account or a vessel within the territorial waters of the state. Article 22 of the CPC provides that the courts of the UAE shall be competent to order urgent or protective measures to be executed in the UAE, even if the said courts are not competent to hear the original case.

3.2. Claims arising out of collision

Article 325 of the FML lays down certain provisions as to the jurisdiction of courts in cases involving collision, and provides that a claim arising out of a collision may be raised before any of the following courts:

- (a) the court in whose area of jurisdiction the defendant is domiciled;
- (b) the court having jurisdiction over the port of registration of the vessel;
- (c) the court within whose jurisdiction the arrest of the defendant's vessel which has caused the damage, or of another vessel owned by the same person, took place (if the arrest of such a vessel is permissible) or the court within whose jurisdiction the arrest could have been made, and where the defendant has provided a guarantee or other security;

- (d) the court within whose jurisdiction the collision took place, if it took place within a port or harbour or other area of internal waters.

3.3. *Claims based on contract*

Any provision in a contract which attempts to exclude the jurisdiction of a court in the UAE, or attempts to confer exclusive jurisdiction on a foreign court, will not be recognized by the UAE courts.

Article 8 of the FML recognizes principles of private international law to a limited extent. The Civil Transactions Code of 1985 recognizes private international law concepts to a far greater extent. This Code states that it is inapplicable to commercial transactions. A Commercial Transactions Code was promulgated in 1993 (Federal Law No. 19 of 1993). It provides that certain businesses are deemed to be commercial business, including all business relating to maritime navigation.

An arbitration clause in an agreement is enforceable by the courts in all the Emirates pursuant to the provisions in the CPC. The courts will normally grant a stay of action if a suit is filed in respect of a contract containing an arbitration clause, provided that the defendant relies on the arbitration clause at the first hearing in court.

3.4. *Port authorities and powers of arrest*

In addition to the powers of arrest conferred by the FML upon the UAE courts, the port authorities of each Emirate also have certain powers of arrest and detention. In general, these powers include the power to refuse to grant outward clearance, and to impose fines and penalties in cases of breach of regulation. If such fines or penalties are not paid, then the port authority has the power to detain or arrest the vessel. The Sharjah Port Authority has the additional power to sell the vessel if the fines or penalties imposed remain unpaid for a period of five days after the order to detain the vessel was made. It must be borne in mind that in cases involving port authorities there is little scope for an appeal against a decision to detain.

Furthermore, the AGCC has published a set of rules and regulations for seaports. These rules allow port officials to detain vessels if they are found to be unsafe, or loaded above the loadline as shown in a vessel's loadline certificate. They may detain the vessel until she is, in their opinion, seaworthy. The regulations also provide that the authorities may detain a vessel until all accounts regarding services rendered to the vessel whilst in port are settled.

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4. IMMUNITY OF STATE-OWNED VESSELS

Article 80 of the FML provides that the rules relating to the arrest of privately owned merchant vessels are also applicable to:

- (a) merchant vessels which are owned, used or managed by the State (the UAE) or any of its public organizations or bodies;
- (b) claims made against the State or any of its public organizations or bodies concerning merchant vessels owned, used or managed by the State;
- (c) cargoes which are owned by the State or any of its public organizations or bodies and which are transported by a foreign mercantile ship;
- (d) cargoes or persons transported by the State or any of its public organizations or bodies on merchant vessels owned, used or managed by the State;
- (e) all claims connected with the operation of vessels referred to in (a), (b) and (c) above.

Warships and some other government vessels are exempt from this rule. Government vessels are exempted if they are owned, used or managed by the State or any of its public organizations or bodies, and engaged for the purposes of public services at the time the right or claim attaching to it arises. It is not permissible for these vessels to be impounded, arrested or detained, or to be subjected to any other judicial process (Article 81), except where the claim arises out of one of the following instances (Article 82):

- (a) claims arising out of a collision at sea or other accidents of navigation;
- (b) claims arising out of acts of assistance or salvage, and general average;
- (c) claims arising out of repairs, supplies and other particular contracts made for purposes connected with the vessel;
- (d) all claims connected with cargoes owned by the State or one of its organs or public agencies and carried in the said vessel.

The State and its public organs shall be entitled to the benefit of the defences available to privately owned merchant vessels, in any claim made against them under the foregoing provisions.

5. TYPES OF CLAIMS FOR WHICH AN ARREST OR ATTACHMENT MAY BE REQUESTED

A preservative arrest of a vessel may be sought as security for a maritime claim. Article 115 defines the term 'maritime claim' as being a claim arising out of any of the following:

- (a) damage caused by a vessel as a result of a collision or other accident;
- (b) loss of life or personal injury occasioned by the vessel and arising out of the use thereof;
- (c) assistance and salvage;
- (d) contracts relating to the use or exploitation of the vessel under a charter party or otherwise;
- (e) contracts relating to the carriage of goods under a charter party, bill of lading, or other documents;
- (f) loss of or damage to goods or luggage transported by a vessel;
- (g) general average;
- (h) towage or pilotage of a vessel;
- (i) supplies of products or equipment necessary for the use or maintenance of the vessel, in whichever place the supply is made;
- (j) building, repairing or supplying a vessel and dock dues;
- (k) sums expended by the master, shippers, charterers or agents on account of the vessel or on account of the owner thereof;
- (l) wages of the master, officers and crew, and other persons working on board the vessel under a contract of maritime employment;
- (m) disputes over the vessel's ownership;
- (n) a dispute in connection with the co-ownership of the vessel, or with the possession or use thereof, or with the right to the profits arising out of the use thereof;
- (o) a maritime mortgage.

Article 115 of the FML specifically provides that an order for a preservatory arrest may not be made except for the enforcement of a maritime claim, but it is noteworthy that such claims as port charges are not defined as 'maritime claims' under Article 115.

6. DOCUMENTARY PRE-CONDITIONS TO AN ARREST

In addition to the conditions set out in the preceding chapters being satisfied, the court will require the following undertakings from the plaintiff:

- (a) An undertaking to pay all official fees and expenses relating to the towing or moving of the vessel or in any way connected with the arrest of the vessel including any amounts due to the crew.
- (b) An undertaking to compensate the owners of the vessel against any delay or damage that may arise from the arrest of the vessel, if the arrest is proved to be wrongful by a judgment of the court.

It is also in the discretion of the court whether to request a guarantee from the plaintiff and to set the value of the guarantee. If required, the guarantee

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must be from a bank in the UAE. The vessel must be within the port limits. The Dubai Courts have in the past been known to require confirmation from the port that the defendant is the owner of the vessel and that the vessel is within port limits.

Although the courts of Dubai and Sharjah generally require the aforesaid undertakings and guarantee, the courts of Abu Dhabi do not ordinarily require these.

7. DEFINITION OF 'SHIP' OR 'VESSEL': WHAT OBJECTS OR PROPERTY MAY BE ARRESTED?

Article 11 of the FML defines the term 'vessel' as follows:

- (1) 'Vessel' shall mean any structure normally operating, or made for the purpose of operating, in navigation by sea, without regard to its power, tonnage, or the purpose for which it sails.
- (2) In applying the provisions of the FML, hovercraft used for commercial or non-commercial purposes shall be deemed to be vessels.
- (3) All the appurtenances of a vessel necessary for the operation thereof shall be deemed to be part of the vessel and of the same nature.

The AGCC rules and regulations for ports define a vessel as follows:

The word 'vessel' shall include every description of ship, boat, raft or water craft of any description, including non-displacement craft and sea-planes, used or capable of being used as a means of transportation on water, irrespective of its means of power, and shall include in its meaning the term 'owners, operators and mortgagees thereof'.

8. EVIDENCE NECESSARY TO SUPPORT AN ARREST APPLICATION

In order to obtain an order for the arrest of a vessel, a plaintiff must generally provide prima facie evidence that he has a maritime claim against the defendant. The granting of an arrest order under the FML is in the discretion of the court. The Plaintiff must prove that the debt is a 'maritime debt' pursuant to Article 115 of the FML. He must allege that unless an arrest order is made, the defendant is likely either to leave the Emirates permanently or to act in a manner which may prejudice the Plaintiff's rights.

9. SISTER SHIPS

Under the provisions of Article 116 of the FML, a claimant may arrest not only the vessel to which the claim relates, but also any vessel owned by the defendant at the time the claim arose. The courts here are not generally inclined to lift the veil of corporate personality.

There is no right to arrest other vessels owned by a defendant in the following circumstances (see Articles 116.2 and 117):

- (a) in a dispute regarding the ownership of a vessel;
- (b) in a dispute relating to the co-ownership of the vessel, or the possession or use thereof, or the right to profits arising out of the use thereof;
- (c) in a claim arising from a maritime mortgage;
- (d) where the vessel was chartered by demise (see Chapter 10).

10. DEMISE-CHARTERED AND TIME-CHARTERED VESSELS

When a claim is created against a vessel not by the owner but by a demise-charterer, the claimant may arrest either the vessel in respect of which the claim arose or any other vessel owned by the demise-charterer. The claimant may not arrest other vessels owned by the owner of the vessel in respect of which the claim arose.

11. FORM OF APPLICATION

The claimant must make a written application to the civil court accompanied by copies of all relevant documents relating to the claim. The court will briefly examine such documents and decide whether or not to grant a provisional remedy.

12. MUST THE ARRESTING PARTY PROVIDE SECURITY?

In all the Emirates except Abu Dhabi, the court does require the plaintiff to provide some form of security in arrest cases, usually in the form of a bank guarantee equivalent to the full amount of the claim. In exceptional circumstances such security may be dispensed with. In some cases, where the plaintiff is a UAE national, he will be permitted simply to provide his own written undertaking, in lieu of a bank guarantee. In the case of claims by crew members for their wages, the courts will not insist upon counter-security being provided.

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In Abu Dhabi, an application for an arrest before judgment is considered on its merits. The courts hardly ever ask for security. They have to be satisfied on the evidence placed before them that there are sufficient grounds to grant provisional relief.

13. REPRESENTATION BY COUNSEL: POWER OF ATTORNEY

Arabic is the official language of the UAE and its courts. All proceedings are conducted in Arabic and all documents that are filed must first be translated into Arabic by a translator licensed by the UAE Ministry of Justice. Lawyers licensed to practice in the courts must be retained in order to institute proceedings in court. A notarized, attested and authenticated power of attorney in favour of counsel is required in all the Emirates.

14. COURT HEARING

The civil courts of the UAE examine the documentary evidence submitted (as described in Chapter 11) to determine whether or not attachment should be ordered.

15. PROVISION OF BAIL BY DEFENDANTS

Under Article 118 of the FML, the competent civil court shall order that the arrest order be lifted if security or other surety is offered which is sufficient to meet the claim. A vessel will not, however, be automatically released from arrest if the arrest has been effected in connection with either of the following matters:

- (a) a dispute as to the ownership of the vessel;
- (b) a dispute in connection with the co-ownership of the vessel, or with the possession or use thereof, or with the right to the profits arising out of the use thereof.

In such cases, the court may permit the person in possession of the vessel to use it if he provides sufficient security, and may use its discretion to charge a person with the management of the vessel during the period of the arrest.

An application for the release of a vessel under the foregoing provisions is not to be construed as an admission or acknowledgement of the claim (Article 118.3).

16. PROCEEDINGS FOR MAINTAINING AN ARREST

Article 285 of the CPC requires that the substantive suit, if not already filed, be filed within eight days of the date on which the attachment was effected.

17. COSTS AND ADVANCES FOR COURT PROCEEDINGS AND CUSTODY

17.1. Court fees

Court fees payable for instituting an action before the Court of First Instance depend on the value of the claim. In Dubai the fee is 7.5% of the amount of the claim, with a maximum cap of United Arab Emirates Dirham (AED) 30,000. An application for provisional relief, such as an arrest order, will attract a fee of 3.75% with a maximum cap of AED 15,000. In the federal courts, the fee payable for instituting an action before the Court of First Instance is 4% of the amount of the claim for the first AED 100,000 and 5% of the amount in excess of AED 100,000 up to a maximum of AED 30,000. This fee will be payable on the application for the arrest order. If a matter goes to appeal, further fees are payable by the appellant; these fees are calculated on the amount under appeal but do not exceed the amount payable to the Court of First Instance. Court fees are payable in their entirety in advance but may be waived in cases where the crew seek an arrest of a vessel for non-payment of their wages. Court fees are usually awarded to a successful plaintiff and are recoverable from the unsuccessful defendant.

17.2. Lawyers' fees

Lawyers licensed to practice in the UAE courts charge a proportion of the amount claimed as their fees. This is usually near the 10% mark but may decrease as the amount of the claim increases. At least one-half of the fees must be paid in advance, although it is not unusual for the entire fee to be paid in advance. Legal expenses are not usually recoverable and the courts only award a token amount as legal costs.

18. ENFORCEMENT OF THE ORDER OF ARREST

Once issued, the order for the arrest of a vessel is served by the court bailiff and police officers, with the assistance of the port authority. The FML requires copies of the arrest order to be served on the master of the vessel or his deputy, and on the port authority at the place where the vessel is arrested.

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19. SERVICE OF THE ORDER OF ARREST

There is no Admiralty Marshal in the UAE. The arrest order is served by the police and the harbour master. Upon service of an order, it is not unusual for the port authorities to take possession of the vessel's documents and the seamen's books or the passport of the master and the crew.

20. TIME ELEMENT

The court issuing the order of arrest also issues a summons to the defendant to attend court and the hearing will take place within thirty days of the date of the arrest. The court is required to deal with such cases promptly, but in practice such matters are long drawn out. All the courts provide for two appeals.

21. APPEAL BY THE DEFENDANT

Although it is possible for a defendant to make an interlocutory appeal against an order of arrest, the chances of success are minimal. Such an appeal would take about two to three months to come up for hearing, during which period the order of arrest issued against the vessel would remain in force. Consequently, the usual course is to provide security in order to obtain the release of the vessel.

22. FORCED SALE IN THE ARREST PROCEDURE; PRIORITY OF CLAIMS IN REM

22.1. *Order for sale of the vessel*

An order for the sale of a vessel is made once a final judgment has been rendered against the vessel and an order for the arrest of that vessel has been confirmed. The order stipulates the price at which the vessel is to be sold, as well as the date on which the sale is to take place.

If the court orders a vessel to be sold, the court fixes the price of the vessel, the conditions of sale and the date on which the public auction is to take place. The sale is advertised in accordance with the provisions of Article 126 of the FML, which requires publication of a notice in one of the widely circulated local newspapers, usually an Arabic daily. The notice of sale is also served on the Registrar of Ships and at any other place specified by the court in accordance with Article 126.2.

Article 126.3 provides that the notice of sale must specify the following:

- (a) the name and domicile of the person arresting the vessel;
- (b) the legal instrument in accordance with which the implementation of the arrest order is to be carried out;
- (c) the amount of the claim for which the arrest was made;
- (d) an address for service of the arresting party within the area of the court in which the vessel lies;
- (e) the name and domicile of the owner of the vessel;
- (f) the name and domicile of the defendant against whom the arrest order was effected;
- (g) a description of the vessel, and its port of registration;
- (h) the name of the master;
- (i) the place where the vessel is located;
- (j) the basic price and the conditions of sale;
- (k) the day, place and time at which the sale is to take place.

The sale takes place after the expiry of fifteen days from the date of publication of the notice. If the creditor fails to complete the required formalities relating to the publication of the notice within ninety days of the issue of the order of the court for sale of the vessel, the court may order the arrest order to be discharged if the debtor so wishes.

A short description of the auction procedure in the UAE may be helpful. A total of three auctions are held at intervals of seven days for the sale of any given vessel. The court sets a price which is referred to as the 'reserve price'. The first auction takes place and the highest offer is taken as the new reserve price for the second auction. The highest offer in the second auction above the reserve price already established is taken as the new reserve price for the third auction, and the highest bidder in the third auction above the established reserve price obtains the vessel.

22.2. *Priority of claims against the sale proceeds*

The FML broadly stipulates the priorities according to which sale proceeds are to be distributed (see Articles 89 and 105). The order is as follows:

- (1) the statutory dues, court expenses and expenses relating to the sale of the vessel;
- (2) crew wages;
- (3) general average claims;
- (4) damages for collision;

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- (5) contracts entered into by the Master within the scope of his authority outside the vessel's port of registration for a 'real need required for the maintenance of the vessel on its continued passage';
- (6) mortgages;
- (7) compensation payable to charterers arising out of breakdowns and damage; and
- (8) insurance premiums.

Priority rights arising from any one voyage shall precede the priority rights arising from any previous voyage, but debts arising from one maritime employment contract for a number of voyages shall be of equal status with debts of the last voyage (Article 90).

Usually the courts determine the priority rights of claimants. In the Emirate of Dubai, it is not unusual in cases involving complicated accounts for the courts to appoint an expert to determine the order of priority in which the sale proceeds are to be distributed, and the expert so appointed may be a person who is not legally qualified.

23. CLAIMS FOR DAMAGES BY THE OWNER OF THE ARRESTED VESSEL

An arrest will generally be regarded as wrongful, if it is subsequently held by the court that the plaintiff obtained the arrest order maliciously, in bad faith and with the intention to cause damage to the defendant. The burden of proof in relation to these matters rests on the defendant who claims damages for wrongful arrest. In certain Emirates, security for wrongful arrest claims is required to be provided in order to obtain an arrest order.

24. SPECIAL REMARKS

The seven Emirates, steeped in tradition, emerged as a nation only in 1971. They have largely used the legislative process to adapt to the modern needs of commerce and several laws have been codified. Islamic *Shari'a*, the common law system, the civil law system, and the laws of other Arabian countries have influenced the development of law in the Emirates and the varied nature of this influence is not without impact on the system.

CHAKRADARAN/AHMED/ASTHANA/RANDENIYA